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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

In Re

Case No. 19-30088 DM

PG&E CORPORATION,

CHAPTER 11

and

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

**ESC LOCAL 20'S SUR-REPLY TO
DEBTORS' MOTION TO PAY
PREPETITION EMPLOYEE
OBLIGATIONS AND CONTINUE
WAGES AND BENEFITS (DOC. 8)**

- Affects PG&E Corporation
 - Affects Pacific Gas and Electric Company
 - Affects both Debtors

Date: February 27, 2019
Time: 9:30 a.m.
Location: U.S. Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

*All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

1 ESC Local 20 was informed today that Debtors are withdrawing their request in the
2 Employee Wage and Benefits Motion for authorization to pay any 2018 Short Term Incentive
3 Plan (STIP) awards.

4 However, the order on the Employee Wages and Benefits Motion must afford payment of
5 STIP awards that are required under the collective bargaining agreement between ESC Local 20
6 and PG&E.¹ Unlike STIP awards to executives and other employees who are not part of the
7 bargaining unit represented by the Union, the STIP awards owed to ESC-represented employees
8 are required by a collective bargaining agreement. Doc. 503-1 (Sperry Decl., Ex. A, CBA, pp.
9 viii-x) (requiring PG&E to pay eligible employees a STIP award). These ESC-represented
10 employees are not executives or officers; they are working people who gave up a portion of their
11 base pay in order to be eligible for these STIP payments. Doc. 503 (Sperry Decl.), ¶ 10. As
12 PG&E recognized, these STIP payments are an “integral component of the compensation” that
13 these employees rely upon on an annual basis. Doc. 8 (Employee Wages and Benefits Motion),
14 p. 14.

15 Because the STIP payments to ESC-represented employees are required by a collective
16 bargaining agreement, PG&E is not free to terminate or alter the requirement to make these
17 payments without first engaging with the Union as required by Section 1113 of the Bankruptcy
18 Code. 11 U.S.C. § 1113(f) (a debtor in possession shall not “unilaterally terminate or alter any
19 provisions of a collective bargaining agreement prior to compliance with the provisions of this
20 section”); *Adventure Resources, Inc. v. Holland*, 137 F.3d 786, 796 (4th Cir. 1998) (Section 1113
21 “plainly imposes a legal duty on the debtor to honor the terms of a collective bargaining
22 agreement ... until that agreement is properly rejected” under the procedures laid out in 11 USC
23 § 1113); *In re Manor Oak Skilled Nursing Facilities*, 201 B.R. 348, 350 (Bankr. W.D.N.Y. 1996)
24 (“[A]ll aspects of a collective bargaining agreement remain in effect and binding until rejection
25 occurs”); *see also* Doc. 501, § III.A.

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¹ As currently worded, the proposed final order on the Employee Wages and Benefits Motion
(Doc. 491-8) appears to authorize the Debtors to “pay all Prepetition Employee Obligations,
including, without limitation, all such obligations under or relating to the ... Employee Incentive
and Retention Programs.” Doc. 491-8, ¶ 1.

Accordingly, the STIP payments required by the collective bargaining agreement must be paid, and the Debtors' motion should be denied to the extent it seeks to avoid these payments. *See, e.g., In re Cutler Industries*, Case No. 91-21886T (Bankr. E.D. Pa. Oct. 10, 1991) (refusing to approve cash collateral order because it fails to require debtor to pay pre-petition health benefit contributions); *In re Arlene's Sportswear, Inc.*, 140 BR 25, 26-28 (Bankr. D. Mass. 1992) (permitting debtor to make postpetition payments to holiday trust fund as required by CBA, as required by § 1113).

Dated: February 25, 2019

**WEINBERG, ROGER & ROSENFELD
A Professional Corporation**

By: /s/ Emily P. Rich
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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on February 25, 2019, I electronically filed the forgoing ESC LOCAL
20'S SUR-REPLY TO DEBTORS' MOTION TO PAY PREPETITION EMPLOYEE
OBLIGATIONS AND CONTINUE WAGES AND BENEFITS with the U.S. Bankruptcy Court,
Northern District California, by using the Court's CM/ECF system.

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On February 25, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED SERVICE LIST

On February 25, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on February 25, 2019.

/s/ Stephanie Mizuhara
Stephanie Mizuhara

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